



POLICE DEPARTMENT

July 15, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Erik Leonardo
Tax Registry No. 938846
20 Precinct
Disciplinary Case No. 2014-11335

The above-named member of the Department appeared before me on June 15, 2015, charged with the following:

1. Said Police Officer, Erik Leonardo, while assigned to the 20th Precinct, on or about August 1, 2013 and through November 12, 2013, having become aware of an allegation of corruption or other misconduct involving a Member of the Service, did fail and neglect to notify the Internal Affairs Bureau Command Center as required.

P.G. 207-21, Pages 1-2 – COMPLAINTS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondents through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, Police Officer Erik Leonardo, testified on the issue of mitigation; the essential facts are not in dispute. Respondent was assigned to the force in 2005. This case marks the first time he has been the subject of formal Department discipline. Sometime in December 2012, Respondent learned that a long-time friend of his, Sergeant Person A, had just been arrested as part of an undercover operation involving the sale of stolen cell phones. Though not a target of that operation, the Sergeant was accused of buying a stolen cell phone from undercover officer Person B. From the start, Sergeant Person A maintained his innocence, claiming that he was entrapped by Officer Person B and was never told that the phone was stolen. (Tr. 12-13)

On or about June 13, 2013, Respondent met and began a relationship with an Officer Person C. Officer Person C was assigned to the 33 Precinct, which was the precinct of occurrence for the arrest of Sgt. Person A. In late June or early July, 2013, Respondent and Officer Person C were discussing the case involving Sgt. Person A, at which point Officer Person C mentioned that she had heard that the case "was a big mess." Specifically, she explained that in these types of operations, the undercover officer is supposed to tell the target that the phone is stolen, but that here the arrest was improper since Officer Person B had never really told Sgt. Person A that the phone was "hot" before selling it to him. (Tr. 14-15) Respondent testified that this conversation happened late at night, and he was unsure what to do with this information and whether he wanted to get involved. (Tr. 15-16)

The next morning, Sgt. Person A happened to call Respondent; Respondent took this call as a sign that he should do something about the information he had heard, and

informed Sgt. Person A of what Officer Person C had told him. (Tr. 16) About a week or so later, Sgt. Person A's defense counsel called Respondent, and Respondent repeated to him what he had heard from Officer Person C. (Tr. 16) Counsel asked Respondent if he would wear a wire and record a conversation with Officer Person C; Respondent declined to do so. (Tr. 24-5) Respondent did say that it was okay for them to give his phone number to the prosecutor handling Sgt. Person A's criminal case. (Tr. 17)

On or about September 12, 2013, Assistant District Attorney [REDACTED], who was handling the prosecution of Sgt. Person A in Manhattan, called Respondent; Respondent then informed A.D.A. [REDACTED] of what he had heard from Officer Person C. (Tr. 17-18) At A.D.A. [REDACTED] request, Respondent then called Officer Person C to tell her that the prosecutor wanted to speak with her; Officer Person C was upset, and hung up on Respondent. (Tr. 21)

Respondent's first interaction with IAB in connection with the information he possessed occurred when IAB contacted him in November 2013, at which time Respondent explained that he didn't realize he had an obligation to come forward with this information, particularly since he never even met Officer Person B. (Tr. 19) He believed if anything, it was the responsibility of Officer Person C, who was friends with Officer Person B and had known about this "supposed rumor" for a longer period of time, to contact IAB. (Tr. 19) Respondent insisted that he has learned his lesson, and now understands his obligation to notify IAB in a situation such as this one. (Tr. 20)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

As Respondent has pled guilty to the charge in this case, the only issue to be addressed here is determining the appropriate penalty: the Department recommends the forfeiture of 15 vacation days, while counsel for Respondent suggests a forfeiture of five vacation days is more appropriate.

In arguing for 15 days, the Assistant Department Advocate suggests that no credit should be given to Respondent for notifying Sgt. Person A's defense counsel and the case prosecutor, since Respondent did not also notify IAB. This position by the Advocate is unduly harsh, however, in that it fails to take into account that Respondent did, in some capacity, come forward with the relevant information soon after learning it. Respondent did not merely tell his friend, Sgt. Person A, what he had heard; he also willingly agreed to speak with the sergeant's criminal defense counsel. To his credit, Respondent declined to wear a wire to secretly record Officer Person C, a course of action that would only have complicated matters. Even more significantly, Respondent also was cooperative in sharing his information with the prosecutor assigned to handle Sgt. Person A's case. Rather than keeping to himself the accusations he had heard about Officer Person B, with the hope of removing himself from any involvement in Sgt. Person A's situation, Respondent did agree to speak with a law enforcement agency. There is no evidence to

suggest that Respondent was withholding information from IAB in an effort to shield Officer Person B from an investigation. As such, the Court agrees with Respondent's counsel that Respondent should get some credit for his willingness to come forward with his information, and some mitigation is warranted.

However, the Court also believes that the forfeiture of five vacation days suggested by Respondent's counsel is an inadequate penalty. Counsel argues that Respondent "did the best he could" under the circumstances, since his information eventually did get to "the right place" – the District Attorney's Office. This argument fails to recognize that the Police Department has an important interest in being notified in situations such as this one, independent of what the District Attorney's Office might do with the information. The Police Department has an interest in monitoring the conduct of its officers, and needs to know when there is an allegation of corruption or misconduct in order to investigate the allegation and take whatever action is appropriate. As the Assistant Department Advocate astutely points out, the Police Department here may have chosen to pull Officer Person B from her assignment at an earlier time, rather than permit her to continue to participate in any undercover operations. Respondent's failure to notify IAB in a timely manner deprived the Department of the information necessary to make an informed judgment about Officer Person B. Also, the delay might very well have compromised their investigation, especially if Officer Person C, who was friends with Officer Person B, chose to alert her friend that questions were being raised about her conduct.

The Court credits that Respondent did not realize his obligation to notify IAB with what his counsel describes as "hearsay-type" information about another officer's

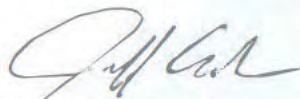
alleged misconduct. However, even if Respondent's failure to contact IAB was not a willful violation of the Patrol Guide, it remains his responsibility as a police officer to be aware of this obligation, and his failure here cannot be ignored or excused. Also, though Respondent did insist that he had learned his lesson from this incident, there is some concern that his initial reaction when contacted by IAB was "why am I the one getting in trouble?" (Tr. 19); this reaction suggests more of a concern for himself rather than for the potential harm he caused to the Police Department.

A review of prior cases reveals a wide-range of penalties, depending on the specifics of each particular case. A case cite by the Assistant Department Advocate, *Disciplinary Case No. 2011-3523* (Jun. 27, 2013), involved an observation by an officer of another officer removing his shield and firearm and kicking an individual in the stomach; for failing to report his observations to IAB, that officer received a negotiated penalty of forfeiture of 20 vacation days. That fact-pattern, though, is very different from the one presented here; for instance, in that case the officer made a direct observation of improper, violent conduct by a fellow officer. A somewhat more analogous case to the present one is *Disciplinary Case No. 84349/08* (May 7, 2009), where a sergeant was informed by an officer that that officer's partner was engaged in improper police stops. The sergeant was somewhat skeptical of this information, and rather than report it immediately to IAB as required, the sergeant first investigated the matter himself; about two weeks later, he finally notified IAB. There, the penalty imposed was a forfeiture of 10 vacation days.

Similarly, Respondent here initially took independent steps to act on his information, a mistake he now recognizes. While some mitigation of penalty is

warranted based on his willingness to share his information with the District Attorney's Office, Respondent's failure to notify IAB, for the reasons discussed above, was more problematic than suggested by his counsel. Taking into account the totality of the circumstances, including the specific facts of this case, prior precedent, and as indicated above, Respondent's prior work record, the Court finds that an appropriate penalty for Respondent is the forfeiture of ten vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner – Trials

APPROVED

NOV 20 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ERIK LEONARDO
TAX REGISTRY NO. 938846
DISCIPLINARY CASE NO. 2014-11335

In 2012 and 2014, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2013. He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner – Trials